CIVIL WRIT JURISDICTION CASE No.7698 OF 1989

In the matter of an application under Articles 226 and 227 of the Consntitution of India.

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1. Bankey Bihari Rai,son of Shri Lakhan Rai, R/o Mohalla Japani Farm Gate, Jai Prakash Nagar, Arrah Town, Distt- Bhojpur--- **(Appellant**)

Versus

1. The Chairman and Managing Director, Central Bank of India, Central office, Bombay,
2. Zonal Manager, Central Bank of India, Zonal Office, Patna,
3. The Disciplinary Authority-cum-Regional Manager, Central Bank of India, Patna Regional Office, Rajendra Nagar, Patna,
4. The Inquiring Officer-cum-Senior Internal Auditor, Audit and Inspection Department, Central Bank of India, Patna-1. ------- **Respondents**)

For The Petitioner : Mr. Pushkar Narain Shahi
Mr. Sandeep Kumar
Mr. Nishant Choudhary

For The Respondents : Mr. Ajay Kumar Sinha.

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P R E S E N T

THE HON'BLE MR. JUSTICE CHANDRAMAULI KUMAR PRASAD

THE HON'BLE DR. JUSTICE RAVI RANJAN

Prasad & Ranjan,JJ. This application has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 18th May, 1987 (Annexure-6) passed by the Disciplinary Authority, whereby the petitioner has been visited with the penalty of dismissal from service. Further prayer made by the petitioner is to quash the order dated 21st November, 1987 (Annexure-9), whereby the Appellate Authority had dismissed the appeal

preferred by the petitioner against the order of dismissal from service.

Shorn of unnecessary details, facts given rise to the present application, are that while the petitioner was working as Officiating Branch Manager of Muradpur Branch of the Central Bank of India at Patna, he was placed under suspension by order as contained in memo dated 10th April, 1982. Later on, by order dated 9.6.1984, the order of suspension was revoked with a condition that petitioner should report at the Muradpur Branch to work as an additional Officer for effecting recovery of loans and advances made by him. While he was working as Additional Officer in the said Branch, a show cause notice dated 1.6.1985 was issued calling upon him to explain as to why a disciplinary proceeding be not initiated against him. In compliance thereof, he filed his explanation dated 27.6.1985. The Disciplinary Authority, on consideration of the explanation filed by the petitioner, decided to hold departmental inquiry against him by order as contained in memo dated 24th December, 1985 and he was served with memo of charges. The memo of charges contained 11 articles of charges. They are as follows:

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1. Misutilising his position in the place of Branch Manager, he sanctioned loans and advances to various non-existent firms/units,
2. Misutilising his position as Branch Manager, he sanctioned loans and advances recklessly in excess of his discretionary powers and at far off places

beyond the control of the Branch, where our Branches are already functioning. He did so completely overlooking the follow up and recovery aspects with ulterior motives. Further, he did not report such advances in the relative control returns in time and thus concealed the facts from the higher authorities.

3. During the period of Credit squeeze i.e. 1.9.1981 to 21.12.81, he made unauthorized advances, violating Reserve Bank of India directives, to different firms/units to the tune of about Rs.25.90 lakhs (excluding DRI advances and Demand Loans),
4. He failed to ensure proper working procedure in respect of handling and follow up of advances,
5. He made advances in the name of working capital finance without verifying the end-use of the term loan component already advanced by him. He also did not care to verify the end-use of Bank's finance by conducting post inspection of the units financed. He also allowed working capital component much before the sanction of the term loan component,
6. On inspection of the units financed by him, wherever available, stocks found were nil/insufficient/ineligible. Bank's signboard was not displayed. Financing was done much in excess of the units' requirement. Machineries/goods were not purchased by the borrowers in a number of cases. Funds raised by way of such finance made by him were diverted by the borrowers in most of the cases. He thereby violated the basic Lending norms, putting the interest of the Bank in jeopardy.
7. He made advances to the parties who are the members of same family,
8. He allowed payment of cost of machinery (term loan component) to the supplier, who are Current Account holder of the Branch, simply by using transfer voucher or even paid in cash without ensuring the supply of assets to the borrowers.
9. In some cases, he obtained title deeds from the borrowers without seeking legal opinion and thereby failed to protect interest of the Bank,
10. On 6.3.1982 he unauthorisedly allowed payment of a cheque for Rs.5000/ drawn by M/s Hind Arts Cottage (CCA/C) in absence of the Branch Manager, Shri N.K.Das with vested interest,
11. He irregularly allowed BP facility to M/s Patna Supply Agency by purchasing Cheques drawn by private parties, whereas sanction in the account was for purchasing Government Cheques/documents

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> only. Out of 9 cheques so purchased in the account between 6.3.1981 to 30.12.1981, there is no record of sending for realization of 7 cheques either in the Dispatch Register or in the Peon Book of the Branch. Our Arrah office (drawee branch) informed that no such cheques were received by them."

On receipt of the aforesaid memo of charges, the petitioner filed his written statement (Annexure-3). By order dated 28.1.1986, one Rabindra Sharma was appointed as the Presenting Officer and by another order of the same day, Shri Y. Shiva Shankar was appointed as the Inquiring Officer. Petitioner participated in the inquiry which was held between the period 3.4.1986 to 20.3.1987. After the conclusion of the inquiry, petitioner submitted his written statement of defence dated 20.1.1987 (Annexure-4) before the Inquiring Officer.

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It is relevant here to state that the Disciplinary Authority had not forwarded to the Inquiring officer the list of witnesses and the list of documents and the same were prepared by the Presenting Officer.

In the inquiry, the Presenting Officer produced altogether 31 Exhibits and examined three witnesses. However, no witness was examined by the petitioner, but three Exhibits were filed by him. The Inquiring Officer, on consideration of the oral and documentary evidence on record, held the petitioner guilty of all the charges. The report of the Inquiring Officer was placed for consideration before the Disciplinary

Authority, who concurred with the finding of the inquiring officer and inflicted different punishments under different charges. He inflicted the punishment of dismissal from service for the misconduct proved under Charge Nos.1,2,3,4,5,6,7 and 11. It inflicted the punishment of reduction of basic pay by two stages for the misconduct proved and affirmed for charge nos.8 and 9 and one stage for Charge No.10. Ultimately, he imposed the consolidated punishment of dismissal from service, which shall ordinarily be a disqualification for future employment.

The aforesaid order of the Disciplinary Authority was communicated to him by order dated 20.5.1987 (Annexure-7). Petitioner preferred appeal against the aforesaid order before the Appellate Authority and in that, made endeavour to assail the findings recorded by the Inquiring officer and pleaded violation of natural justice. The Appellate Authority, on consideration of entire material available on record and the plea taken by petitioner, by a detailed order dated 21.11.1987 (Annexure-9), dismissed the appeal.

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It is common ground that petitioner is governed by the Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as 'the Regulation').

Mr. Pushkar Narain Shahi, appearing on behalf of the petitioner, contends that in the present case, the Disciplinary Authority has not forwarded to the Inquiring Officer the copy of articles of charges and statement of imputations of misconduct and misbehaviour and list of documents by which and list of witnesses by whom, the articles of charges are proposed to be substantiated. He submits that Regulation 6 (5) (i) (iii) obliges the Disciplinary Authority to forward the aforesaid to the Inquiring Officer. He points out that violation of the aforesaid provision itself vitiates the order of the Disciplinary Authority and consequently, the appellate order.

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Mr. Ajay Kumar Sinha, appearing on behalf of the respondent-Central bank of India, however, contends that the copy of articles of charges and statement of imputations of misconduct have been drawn by the Disciplinary Authority and even if it was not forwarded to the Inquiring officer, it shall not vitiate the impugned order. He points out that the list of documents by which and list of witnesses by whom, the articles of charges were proposed to be substantiated, prepared by the Presenting Officer and at no point of time, the petitioner had objected to that. He submits that the preparation of list of documents and the witnesses by the Presenting Officer was at the instance

of the Disciplinary Authority and that in no way, caused prejudice to the petitioner touching upon the validity of the impugned order.

Having appreciated the rival submission, we do not find any substance in the submission of Mr. Shahi. Regulation 6 of the Regulations provides procedure for imposing major penalties. Regulations 6 (5)(i)(iii), which are relevant for the purpose, read as follows:

"6.- **PROCEDURE FOR IMPOSING MAJOR PENALTIES;**

xxx xxx xxx

(5).- The Disciplinary Authority shall, where it is not the inquring authority, forward to the inquiring authority:

(i) a copy of the articles of charges and statements of imputations of misconduct or misbehaviour;

(iii) a list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated:"

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In the present case, the Disciplinary Authority is not the inquiry authority and from the aforesaid provision, it is evident that the Disciplinary Authority was required to forward to the inquiring authority the copy of articles of charges and statement of imputations of misconduct and list of documents and the list of witnesses but the same has not been done. The question is what effect it shall have on the impugned orders ultimately passed.

It is admitted that articles of charges and statement of imputations of misconduct were not drawn

by the Disciplinary Authority. An officer of the Bank was appointed by the Disciplinary Authority as Presenting Officer. The Presenting Officer, under the direction of the Disciplinary Authority, prepared the list of documents by which and list of witnesses by whom the articles of charges were proposed to be substantiated. At no point of time, petitioner make any grievance. After the conclusion of the inquiry, he filed his written statement and in that, he also did not made any grievance in this regard. We are of the opinion that the aforesaid infraction of the regulations, in the facts of the present case, cannot be said to be of such magnitude that it shall vitiate the impugned order. It is well settled that violation of any and every procedural provisions, does not vitiate the inquiry and ultimate order. Accordingly, we reject this submission of Mr. Shahi.

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Mr. Shahi then contends that findings of guilt recorded by the Inquiring Officer and also affirmed by the Disciplinary Authority and Appellate Authority, are perverse. This argument has been noted only to be rejected. It is well settled that finding recorded by a authority can be called perverse, when finding is recorded without consideration of the relevant materials or on consideration of the irrelevant

materials or a person duly instructed in law will not come to that finding.

We have perused the report of the Inquiring Officer in which he has incorporated the misconduct imputed against the petitioner, the plea taken by the Presenting Officer, the defence put forth by the petitioner and after consideration and analyzing the case of the management, the petitioner and the documents recorded reasoned findings. While doing so, it has adverted to the plea taken by the writ petitioner. We are of the opinion that the finding recorded by the Inquiring officer and affirmed by the Disciplinary Authority cannot be said to be perverse calling for interference by this Court in exercise of writ jurisdiction.

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Mr. Shahi then contends that the petitioner was not given opportunity to examine its witnesses. Although such a plea was not raised before the Inquiry Officer in the written statement filed by the petitioner, nor before the Appellate Authority in the memo of appeal, but such a plea has been made by the petitioner for the first time in paragraph no.37 of the writ application, wherein he has stated that the petitioner filed list of witnesses but the Inquiring Officer did not offer any opportunity to examine those witnesses.

Respondents' have replied that in paragraph no.22 of the counter affidavit in which it has been denied that the petitioner was not given opportunity to examine its witnesses. In fact, it has been stated that after the completion of the management witnesses, petitioner did not ask for examination of any witness and in fact, chose to give statement of defence. From the report of the Inquiring Officer, it is also evident that no witness was produced by him in support of his stand. Thus, the very assumption that petitioner was not given opportunity to examine its witnesses, is unfounded on fact and therefore, same deserves to be rejected.

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Mr. Shahi lastly submits that the punishment of dismissal from service is disproportionate to the gravity of allegation. We do not find any substance in the submission of Mr. Shahi. It is well settled that what punishment a particular misconduct deserves is primarily to be decided by the Disciplinary Authority and this Court interferes with the quantum of punishment only when it is shown that it is disproportionate to the gravity of allegation or in other words, shocking to the conscience of the Court. The charges leveled and proved against the petitioner have been incorporated in the preceding paragraph of this judgment. The charges proved touch upon the acts

of omissions and commissions committed by the petitioner while working as Officiating Branch Manager, which are serious in nature touching upon his integrity. In the background thereof, the punishment inflicted on him, cannot be said to be disproportionate to the gravity of allegation.

In the result, we do not find any merit in this application and it is dismissed accordingly, but without any order as to cost.

(Chandramauli Kr.Prasad)

(Dr.Ravi Ranjan)

Patna High Court,
Dated,12th November,2008,
AFR/ ahk/

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